

CGC-CC-0693
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August 8, 2007

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 2002

FILED/ACCEPTED

AUG - 8 2007

Federal Communications Commission
Office of the Secretary

ATTN: Consumer and Governmental Affairs Bureau

RE: Request For Exemption From Closed Captioning
Requirements Submitted by Anchorage Baptist Temple, CGC-
CC-0693

Dear Ms. Dortch:

Transmitted herewith on behalf of Anchorage Baptist Temple ("ABT") is an original and two copies of its "Reply" to the "Opposition to the Petition for Exemption from Closed Captioning Requirements Filed by Anchorage Baptist Temple, filed by Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)". This Reply is submitted in connection with the above-referenced Proceeding and filed pursuant to section 79.1(f)(2)(6) of the Commission's Rules and Regulations, 47 C.F.R. § 1.46(2007).

ABT respectfully requests that the enclosed copy of this Reply, marked "COPY," be stamped as received and returned to the undersigned.

Telephone: (970) 385-7312

E-Mail: Lawman@animes.net

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Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully Submitted,

ANCHORAGE BAPTIST TEMPLE

By: Joseph E. Dunne III
Joseph E. Dunne III
Its Attorney

xc: As Per Attached Certificate of Service
Tom Steigleman

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In Re Request For Exemption From) CGB-CC-0693
Section 79.1 of the Commission's)
Rules and Regulations)
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To: Consumer and Governmental Affairs Bureau

REPLY

Anchorage Baptist Temple ("ABT"), by its undersigned attorney and pursuant to section 79.1(f)(2)(6) of the Commission's Rules and Regulations, 47 C.F.R. § 79.1(f)(2)(6) (2007), hereby respectfully submits this Reply to the "Opposition to Petition for Exemption from Closed Captioning Requirements Filed by Anchorage Baptist Temple" submitted by Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), for itself and other parties ("Opposition") on July 3, 2007¹. In support of its Reply, ABT shows and states as follows.

¹. According to section 79.1(f)(2)(6), ABT was required to file its Reply by July 26, 2007. On that date, with the consent of TDI, ABT filed a "Request

I. TDI's Opposition Should Be Dismissed for Failure to Provide the Affidavit Required by Rule

1. Section 79.1(f)(9) of the Commission's Rules and Regulations, 47 C.F.R. § 79.1(f)(9) (2007), requires that "All petitions and responsive pleadings shall contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on." TDI acknowledged that it did not comply with this rule and requested a waiver of the rule. In requesting the waiver, however, it did not provide any facts to justify the waiver, or show why it could not comply with the rule requirement, or make any arguments justifying its requested waiver. For that reason alone the Opposition should be dismissed.

2. ABT acknowledges that there are no Commission cases to guide petitioners concerning the affidavit requirement in section 79.1(f)(9). The Commission has, however, decided exemption requests based on facts supported by affidavit. WDLP Broadcasting, Inc., DA-05-2257 (Deputy Chief, Policy Division).

for Extension of Time" on that date.

3. There are, however, other Commission rules which concern rule requirements for affidavits. These rules include those pertaining cable carriage complaints (§ 76.6), petitions to deny (§73.3584), rulemaking petitions (§1.420), and settlement agreements in broadcast application proceedings (§73.3525). In deciding cases pertaining to section 1.420 the Commission has dismissed counterproposals to rulemaking petitions where a party did not provide an affidavit, Lincoln, Orange Beach, Steelville and Warsaw, 17 FCC Rcd 6119(2002), or even submitted improperly prepared affidavits. Thomasville, Ga, 15 FCC Rcd 9450(2000). In the former Allocations Branch, it is a firm Commission policy to dismiss counter-proposals submitted in allocations cases when the facts are not supported by affidavit. Lincoln, Orange Beach, Steelville and Warsaw, *supra*.

4. Petitions to Deny are also required to be supported by affidavit. 47 U.S.C. § 309((d)(1). The Commission has also dismissed Petitions to Deny for failure to submit the required affidavit. WTWV, Inc., 33 RR2d 65, 51 FCC 2d 1247(1975). The Commission has also rejected settlement agreements in broadcast

application proceedings and required the submission of affidavits as required by rule. Catherine Juanita Henry, 3 FCC Rcd 6806 (Rev. Bd. 1988).

5. Accordingly, the Commission policy of requiring strict compliance with the affidavit requirement in its various rules should also apply to responsive pleadings under section 79.1(f)(9). TDI's waiver request should be denied. Moreover, Commission precedent establishes that the proper remedy for failure to comply with the requirement for an affidavit is the dismissal of the deficient document.

II. ABT Does Comply with the Angler Case

6. TDI argues that ABT does not comply with the Commission standard established by In the Matter of Anglers for Christ Ministries, Inc.; New Beginning Ministries; Video Programming Accessibility; Petitions for Exemption from Closed Captioning Requirement, Memorandum Opinion and Order, DA 06-1802 (2006) (Anglers Exemption Order). TDI urges that the Commission find that the Anglers Exemption Order standard does not apply because the case is not final. This assertion is erroneous.

Under delegated authority a Commission Bureau may rely on its own decision in related proceedings until the Commission overturns its decision.

7. Moreover, ABT does comply with the standard set in the Anglers Exemption Order. The first prong of the test required by *Anglers* is that the petitioner be a non-profit organization. Clearly, as a church, ABT complies with that test. The next prong is that the petitioner not receive compensation for its programming. ABT complies with the spirit of that test, even if it does not literally comply. As set forth in Mr. Steigleman's Verified Statement, attached to its Petition, ABT does receive revenue from the sale of tapes of its program, but this revenue is generated entirely from its own membership. ABT does not receive any revenue for the broadcast on its program on any broadcast station, cable system or other possible outside source of revenue. Moreover, the amount acquired by the sale of its tapes to its membership is only \$2,000. \$2,000 is so small a sum, compared to the cost of the program, as to be *de minimis*.

8. Finally, the Anglers Exemption Order requires the petitioner to show that imposition of the Closed Captioning requirements would cause significant hardship. As argued below ABT's submission shows that the cost of providing closed captioning for its program would equal 50 percent of its cost of producing and distributing its program. A 50 percent increase in the cost of a program is clearly a significant hardship. Moreover, ABT's showing of significant hardship is supported by a Verified Statement, the equivalent of an affidavit. Section 1.16 of the Commission's Rules and Regulations, 47 C.F.R. §1.16 (2007).

III. ABT Has Shown That Compliance with the Closed Captioning Requirement Would Impose an Undue Burden

9. TDI asserts that ABT, in its petition, failed to show that adherence to the Closed Captioning requirements would cause an undue hardship. This is clearly not the case. ABT's religious program is produced by only one paid employee with the help of 14 volunteer members of the church. The cost of Closed Captioning its program would equal 50 percent of the total cost of production. This amount clearly is an undue burden, compared with the

amount of financial outlay necessary to produce the program..

Wherefore, the foregoing considered, Anchorage Baptist Temple respectfully requests that: (1) The Commission deny TDI's request for a waiver of the rules requiring responsive pleadings to be supported by an affidavit; (2) dismiss the Opposition for failure to provide the required affidavit; (3) reject TDI's assertions that ABT has failed to show that compliance with the Closed Captioning requirements do not show impose an undue burden on ABT; and, (4) grant ABT's Petition for Exemption from Closed Captioning Requirements.

Respectfully Submitted,

ANCHORAGE BAPTIST TEMPLE

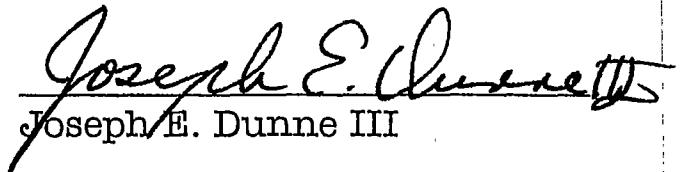
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CERTIFICATE OF SERVICE

I, Joseph E. Dunne III, attorney for Anchorage Baptist Temple, hereby certify that I have caused a copy of the foregoing "Reply" to be mailed, first class postage pre-paid, to the following:

Paul Gagnier, Esq.
Bingham McCuthen LLP
2020 K Street, N.W.
Washington, D.C. 20006
(Counsel for Telecommunications for the Deaf
and Hard of Hearing, Inc.)


Joseph E. Dunne III